

records or the applicant's records. The Department then determined the applicant's portion of the 50 million board feet by determining the lesser of the amount verified by the records or 15 million board feet. Applicants could submit the information documenting the amount of purchases in the following manner:

(i) Actual receipts for purchasing unprocessed timber from National Forest System lands within Washington State; or

(ii) A statement by a certified public accountant of:

(A) A summary by fiscal year for 1988, 1989 and 1990 of the applicant's acquisitions of timber originating from National Forest System lands in the State of Washington, listing total volume for each of the three fiscal years; and

(B) The average volume for the three fiscal years. The volumes to be reported were the harvest volumes, except in the case of open sales. Advertised volumes had to be reported for open sales.

(C) The certified public accountant must have certified to the following:

"I certify that under the penalties and remedies provided in §492 of the Act (16 U.S.C. 620d) and the penalty of perjury provided in the False Statements Act (18 U.S.C. 1001) that the information provided in support of this application is, to the best of my knowledge and belief, a true, accurate, current, and complete statement of [applicant's company's name] National Forest System timber acquisitions originating from within the State of Washington for fiscal years 1988, 1989 and/or 1990."

(D) The certified public accountant's statement and certification must have been on the accountant's company letterhead, must have been notarized, and must have accompanied the applicant's application.

(c) *Selling and trading rights.* The purchase limit right obtained under this rule may be sold, traded, or otherwise exchanged with any other person subject to the following conditions:

(1) Such rights may not be sold, traded, or otherwise exchanged to persons already in possession of such rights:

(2) Any person selling, trading, or exchanging any or all of the rights obtained under this rule shall advise the Regional Forester of the amount being

traded and the name(s) of the person(s) acquiring such rights within 15 days of the transaction; and

(3) No person may have or acquire more than 15 million board feet in one fiscal year.

(d) *Information collection.* The application procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0114.

(e) *Persons with approved shares.* The application period for shares of the indirect substitution exception for acquiring unprocessed timber originating from National Forest System lands within the State of Washington closed on January 8, 1992. Persons with approved shares are responsible for monitoring and controlling their acquisitions of National Forest System timber originating from within the State of Washington to assure approved share amounts are not exceeded in any Federal fiscal year. Unused portions of annual shares may not be "banked" for use in future fiscal years. The acquisition of such National Forest System timber must be reported to the Forest Service in accordance with §223.193 of this subpart. The following shares are approved as of September 8, 1995:

(1) Cavenham Forest Industries, Portland, OR, 1,048,000 board feet.

(2) Weyerhaeuser, Tacoma, WA, 15,000,000 board feet.

Subpart G—Special Forest Products

SOURCE: 73 FR 79386, Dec. 29, 2008, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, subpart G was added, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was delayed indefinitely.

§ 223.215 Applicability.

The regulations contained in this subpart govern the disposal of special forest products from National Forest System lands through sale and free

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use. Pursuant to the Department of the Interior and Related Agencies Appropriations Act of 2000 (Pub. L. 106-113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108-108, special forest products that are also forest botanical products shall be sold, or offered for free use, subject to the requirements of subpart H of this part, until termination of the forest botanical pilot program. A commercial sale of special forest products shall be governed by a contract, permit, or other authorizing instrument. Free use above the incidental-use harvest level shall be conducted under a permit, unless otherwise provided.

§ 223.216 Special Forest Products definitions.

As used in this subpart:

Person: Any individual, partnership, corporation, association, Tribe, or other legal entity.

Special forest products: Products collected from National Forest System lands that include, but are not limited to, bark, berries, boughs, bryophytes, bulbs, burls, Christmas trees, cones, ferns, firewood, forbs, fungi (including mushrooms), grasses, mosses, nuts, pine straw, roots, sedges, seeds, transplants, tree sap, wildflowers, fence material, mine props, posts and poles, shingle and shake bolts, and rails. Special forest products do not include sawtimber, pulpwood, non-sawlog material removed in log form, cull logs, small roundwood, house logs, telephone poles, derrick poles, minerals, animals, animal parts, insects, worms, rocks, water, and soil.

§ 223.217 Authority to dispose of special forest products.

The Forest Service has authority to dispose of special forest products located on National Forest System lands pursuant to the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528-531); the National Forest Management Act of 1976, as amended (16 U.S.C. 472a *et seq.*); and, the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600-1614).

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§ 223.218 Consistency with plans, environmental standards, and other management requirements.

The disposal of special forest products from National Forest System lands shall be consistent with applicable land management plans. Each contract, permit, or other authorizing instrument shall include, as appropriate, provisions requiring the person or user to:

- (a) Provide fire protection and suppression;
- (b) Protect natural resources;
- (c) Regenerate harvested species after harvesting operations;
- (d) Minimize soil erosion;
- (e) Maintain favorable conditions of water flow and quality;
- (f) Minimize adverse effects on, protect, or enhance other national forest resources, uses, and improvements; and
- (g) Deposit voucher specimens with a curator of a nationally recognized herbarium in North America as identified in the *Index Herbariorum* when the permit, contract, or other authorizing instrument allows bioprospecting.

§ 223.219 Sustainable harvest of special forest products.

(a) *Sustainable harvest levels.* Prior to offering a special forest product for sale or free use, the responsible forest officer must determine the product's sustainable harvest level. A special forest product's sustainable harvest level is the total quantity of the product that can be harvested annually in perpetuity on a sustained yield basis. Responsible forest officers shall not authorize harvest or free use of special forest products in an amount exceeding known sustainable harvest levels. In determining a sustainable harvest level, the responsible forest officer may consider harvest levels of the product for the previous three years, if such information is available. Responsible forest officers may consider factors such as year-to-year and site-to-site variability, climate, weather change, geographic scale, and scientific data available prior to making their sustainability determination and establishing monitoring time frames consistent with paragraph (c) of this section. Responsible forest officers will consult with Tribes, to the extent appropriate,